

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WESTERN TOWBOAT COMPANY,

Plaintiff,

v.

VIGOR MARINE, LLC,

Defendant.

IN ADMIRALTY

Case No. 2:20-cv-00416-RSM

DECLARATION OF DAVID BOYAJIAN
IN SUPPORT OF (1) REPLY IN
SUPPORT OF MOTION TO EXTEND
DISCOVERY AND PRETRIAL
DEADLINES; AND (2) REPLY IN
SUPPORT OF MOTION TO STAY

File Date: April 16, 2021

Trial Date: June 28, 2021

David Boyajian declares as follows under the penalty of perjury of the laws of the
United States of America:

1. I am an attorney of record for Defendant VIGOR MARINE, LLC ("Vigor") in
the above matter. I am over the age of eighteen, (18) and am otherwise competent to testify
to the facts stated herein. I make this declaration based upon personal knowledge.

2. On Tuesday, April 13, 2021 I had a phone conference with Ericka
Hailestocke-Johnson of NOAA. Ericka told me that in July 2017, Western sent NOAA a
letter about liability for the sinking of the YFD-70 Drydock. Western did not produce such a
letter in discovery although Vigor requested all written communication about the voyage or

DECLARATION OF DAVID BOYAJIAN IN SUPPORT OF
REPLY IN SUPPORT OF MOTION TO EXTEND DISCOVERY
AND PRETRIAL DEADLINES AND MOTION TO STAY - 1

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1 the incident. Ericka also told me that NOAA has processed and interpreted the data from the
2 research mission, that all the parties have finally agreed to participate in the final phase of
3 NOAA's process, and that NOAA is nearly ready to sit down with the parties to develop a
4 cooperative agreement and to proceed with restoration of the sanctuary. She also told me
5 NOAA expects this process to take months, not years.

6 3. Western's counsel represented to me that Western had completed a re-search
7 and produced all responsive documents, but still has not produced the letter to NOAA.

8 4. I have reviewed the report of Western's expert Captain Fox, a copy of which
9 is attached as **Exhibit 1**.

10 5. I have reviewed the report of Western's expert David L Kreibel, PhD, an
11 excerpt of which is attached as **Exhibit 2**.

12 6. I have discussed staying this case with Western's counsel many times over the
13 last year. In early conversations, Western's counsel represented that Western may agree to
14 the idea. When we couldn't agree about the stay, I told Western's counsel, repeatedly, that
15 we would move to stay the case at or near the end of discovery.

16 7. I have also reviewed the research data related to the drydock's position in the
17 sanctuary and have communicated with NOAA about the same. I know from participating
18 with NOAA that the drydock sunk in approximately 6000' of water. NOAA identified the
19 drydock on a deep-sea side-scanning sonar recon voyage. When a government funded
20 submarine survey of the impact site fell apart, I helped arrange for a suitable replacement
21 vessel and submarine on the commercial market, saving considerable time and money. The
22 government and Vigor hired scientists to conduct ROV submarine dives to confirm the
23 location of the drydock and collect considerable amounts of data and biosamples. That data
24 has been analyzed and NOAA has sent letters to the parties indicating they are ready to sit
25 down and figure out how to mop this mess up and what it will cost. Depending on the
26 cooperation of the parties through the entire process just described, NOAA will finally assess

DECLARATION OF DAVID BOYAJIAN IN SUPPORT OF
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1 a penalty over and above restoration costs.

2 8. Western's counsel (Mr. Simms) and Vigor's (David R. Boyajian and Schwabe
3 Williamson & Wyatt) are opposite each other in another complex maritime matter before this
4 Court that has been stayed since March 9, 2016—for over 5 years—awaiting resolution of
5 cases pending in the United States District Court for the Southern District of New York:
6 *AEGEAN MARINE PETROLEUM S. A. v. CANPOTEX SHIPPING SERVICES LTD. et al.*,
7 No.: 2:15-cv-00172-RAJ. Judge Richard A. Jones asked the parties to file status updates on
8 progress of the SDNY litigation every few months. Mr. Simms has, without complaint, filed
9 12 joint status reports over the past 5 years without seeking to lift that stay by motion or
10 otherwise, and without arguing that the stay there is “indefinite” or so long as to be
11 inherently prejudicial. We could certainly do the same here, and keep this Court apprised of
12 progress with the NOAA process.

13
14 Dated this 16th day of April, 2021 at Portland, Oregon.

15
16 /s/ David Boyajian

17 David Boyajian, WSBA # 50195

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, I served the following DECLARATION OF DAVID BOYAJIAN IN SUPPORT OF (1) MOTION TO EXTEND DISCOVERY AND PRETRIAL DEADLINES AND (2) MOTION TO STAY on:

Anthony J. Gaspich
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☒ by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all associated counsel.

/s/ David Boyajian
David R. Boyajian